

Assembly Bill No. 380

CHAPTER 517

An act to amend Section 1108 of the Evidence Code, relating to evidence of prior sexual offenses.

[Approved by Governor October 4, 2001. Filed with Secretary of State October 5, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

AB 380, Wright. Evidence of prior sexual offenses.

Existing law provides that, except as specified, evidence of a person's character is inadmissible when offered to prove his or her conduct on a specified occasion. Existing law creates exceptions to that rule, including that in a criminal action in which the defendant is accused of a sexual offense, evidence of the defendant's commission of another sexual offense or offenses is not inadmissible under that rule, except as specified. Existing law defines the term "sexual offense" as conduct proscribed by various sections of the Penal Code as well as other types of conduct.

This bill would expand the definition of "sexual offense" for the purposes of the aforementioned exception to the rule against the admission of character evidence to include aggravated sexual assault of a child.

The people of the State of California do enact as follows:

SECTION 1. Section 1108 of the Evidence Code is amended to read:

1108. (a) In a criminal action in which the defendant is accused of a sexual offense, evidence of the defendant's commission of another sexual offense or offenses is not made inadmissible by Section 1101, if the evidence is not inadmissible pursuant to Section 352.

(b) In an action in which evidence is to be offered under this section, the people shall disclose the evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least 30 days before the scheduled date of trial or at such later time as the court may allow for good cause.

(c) This section shall not be construed to limit the admission or consideration of evidence under any other section of this code.

(d) As used in this section, the following definitions shall apply:



(1) “Sexual offense” means a crime under the law of a state or of the United States that involved any of the following:

(A) Any conduct proscribed by Section 243.4, 261, 261.5, 262, 264.1, 266c, 269, 286, 288, 288a, 288.2, 288.5, or 289, or subdivision (b), (c), or (d) of Section 311.2 or Section 311.3, 311.4, 311.10, 311.11, 314, or 647.6, of the Penal Code.

(B) Contact, without consent, between any part of the defendant’s body or an object and the genitals or anus of another person.

(C) Contact, without consent, between the genitals or anus of the defendant and any part of another person’s body.

(D) Deriving sexual pleasure or gratification from the infliction of death, bodily injury, or physical pain on another person.

(E) An attempt or conspiracy to engage in conduct described in this paragraph.

(2) “Consent” shall have the same meaning as provided in Section 261.6 of the Penal Code, except that it does not include consent which is legally ineffective because of the age, mental disorder, or developmental or physical disability of the victim.

